



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 5
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BALTIMORE, MD 21201

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October 7, 2020

(b) (6), (b) (7)(C)

Re: International Union, Security, Police and
Fire Professionals of America (SPFPA) and
its Local 555 (Tier Tech International)
Case 05-CB-262885

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that International Union, Security, Police and Fire Professionals of America (SPFPA) and its Local 555 ("the Union") has violated the National Labor Relations Act.

Decision to Dismiss: Based on our investigation, I have concluded that further proceedings are not warranted, and I am dismissing your charge for the following reasons:

Your charge alleges that the Union violated Section 8(b)(1)(A) of the National Labor Relations Act by failing and/or refusing to assist unit members with issues regarding their pay. More specifically, you allege the Union failed and/or refused to file a grievance over Tier Tech International ("the Employer") paying you and other bargaining unit members by your actual hours worked and not according to what your regularly scheduled hours would have been were it not for a reduction in hours caused by the COVID-19 pandemic. It is well established that a union has a duty of fair representation to its members. *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953). The Supreme Court defined this duty as "a statutory obligation to serve the interests of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct." *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). Unions are allowed a "wide range of reasonableness in serving unit employees, and any subsequent examination of a union's performance must be 'highly deferential'." *Letter Carriers Branch 529*, 319 NLRB 879, 880 (1995), quoting in part *Air Line Pilots Assn. v. O'Neill*, 399 U.S. 65, 78 (1991). In sum, a union breaches the duty of fair representation in violation of Section 8(b)(1)(A) of the Act when it represents employees in a manner that is arbitrary, discriminatory, or in bad faith. *Amalgamated Transit Union Local No. 1498 (Jefferson Partners L.P.)*, 360 NLRB 777, 778 (2014).

As an initial consideration, the investigation uncovered insufficient evidence to show that a grievance was requested over the Employer's failure to pay unit employees according to what their regularly scheduled hours would have been were it not for the pandemic. Similarly, the investigation revealed insufficient evidence to demonstrate that the Union conditioned the performance of its representative functions on the outcome of a then-upcoming representation

election. Instead, the preponderance of the evidence, at hand, shows that the Union informed unit members that there was adequate time to negotiate a successor collective-bargaining agreement following the representation election and re-bid of the contract for services held by the Employer. There is nothing to show that the Union's actions in this regard were arbitrary, discriminatory, or undertaken in bad faith. *Id.* Further, the investigation disclosed that the Union continued to assist employees in other matters, including by filing and processing grievances, after receiving notice of a rival union's petition to represent the bargaining unit. Lastly, even if it were determined that a grievance had been requested over the Employer paying unit members according to their actual hours worked, there is insufficient evidence to show that such a grievance would have been meritorious. See e.g., *Memorandum GC 20-09*. In these circumstances, there is insufficient evidence to demonstrate that the Union's actions were "so far outside a wide range of reasonableness that [they were] wholly irrational." *O'Neill*, supra.

Based on the foregoing, I have concluded further proceedings are not warranted, and I am refusing to issue complaint in this matter.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlrb.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlrb.gov. If you require additional assistance with E-Filing, please contact e-Filing@nlrb.gov).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street, S.E., Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **October 21, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than October 20, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the

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appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before October 21, 2020**. The request may be filed electronically through the *E-File Documents* link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after October 21, 2020, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,

/s/ Sean R. Marshall

Sean R. Marshall
Regional Director

Enclosures

- 1) Appeal Form
- 2) E-Filing to Appeals Instructions

cc: See Page 4

cc: Ms. Gloria Scott, President
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